

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**IN RE: UNIFIED MESSAGING  
SOLUTIONS LLC AND  
ADVANCED MESSAGING  
TECHNOLOGIES, INC.  
PATENT LITIGATION**

**MDL No. 2371**

**Master Docket No. 12 C 6286**

**JURY TRIAL DEMANDED**

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**STIPULATION RESERVING RIGHT TO APPEAL  
AND FOR ENTRY OF FINAL JUDGMENT OF NON-INFRINGEMENT  
UNDER THE COURT'S CLAIM CONSTRUCTION**

WHEREAS, Plaintiffs Unified Messaging Solutions LLC (“UMS”) and Advanced Messaging Technologies, Inc. (“AMT”) (collectively, “Plaintiffs”) brought constituent actions in the above-entitled multi-district litigation proceeding (collectively, the “Constituent Actions”) against certain defendants, asserting that they infringe certain claims of United States Patent Nos. 6,857,074 (the “’074 Patent”); 7,836,141 (the “’141 Patent”); 7,895,306 (the “’306 Patent”); 7,895,313 (the “’313 Patent”); and/or 7,934,148 (the “’148 Patent”) (collectively, the “Patents-in-Suit”);

WHEREAS, the defendants to the pending Constituent Actions (collectively, “Defendants”) have denied that the Patents-in-Suit are valid or infringed, and have counterclaimed that each of the Patents-in-Suit is not valid and not infringed;

WHEREAS, the term “*message(s) [not including notification message(s)]*” is an element of each asserted claim of each of the Patents-in-Suit;

WHEREAS, in its Rulings on Claim Construction (Doc. 639), issued on December 20, 2013, the Court construed the claim term “*message(s) [not including notification messages]*” to mean “*communication(s) received over a telephone line in audio, facsimile, or data file format*”

and held, among other things, that email messages are not encompassed within the term's purview;

WHEREAS, on February 25, 2014, this Court denied Plaintiffs' Motion for Reconsideration of the Court's construction of the term "*message(s) [not including notification messages]*," holding, among other things, that the term does not encompass "messages [that] might be conveyed by means other than telephone lines, such as computer to computer over the Internet" (*see* Doc. 676);

WHEREAS, the term "*data media type*" is an element of independent claim 1 of the '074 Patent and other claims depending therefrom;

WHEREAS, in its Rulings on Claim Construction (Doc. 639), issued on December 20, 2013, the Court construed the claim term "*data media type*" to mean "*data media file type*" and held, among other things, that email is not encompassed within the term's purview;

WHEREAS, Plaintiffs and Defendants agree: (i) that all Defendants' accused products and systems do not meet the "*message(s) [not including notification messages]*" limitation of all asserted claims of the Patents-in-Suit under the Court's construction; and (ii) the accused systems of Defendants CoxCom, LLC, EarthLink, Inc., Juno Online Services, Inc., NetZero, Inc., Northwestern Mutual Life Insurance Co., and Yahoo! Inc. do not meet the "*data media type*" limitation of asserted claims 1, 2, and 4 of the '074 patent under the Court's construction; and

WHEREAS, to avoid the expense and time for resolving a motion by Defendants for summary judgment of non-infringement, Plaintiffs consent to entry of a Final Judgment of Non-infringement by Defendants of the Patents-in-Suit.

THEREFORE, Plaintiffs and Defendants stipulate as follows:

1. On the basis of: (i) the Court's constructions of "*message(s) [not including notification messages]*" and "*data media type*" (when applicable); and (ii) the stipulation above that Defendants' accused products and systems do not practice the asserted claims in view of the Court's constructions of "*message(s) [not including notification messages]*" and "*data media type*" (when applicable), either literally or under the doctrine of equivalents, the Court should enter a final judgment of non-infringement in favor of all Defendants as to all of the Patents-in-Suit, both with respect to Plaintiff's offensive claims of infringement and with respect to Defendants' counterclaims for declaratory judgment of non-infringement. Other issues, including construction of other claim terms of the Patents-in-Suit, do not form a basis of the judgment.

2. This stipulation is without prejudice to Plaintiffs' right, if any, to re-assert their claims against Defendants should the United States Court of Appeals for the Federal Circuit reverse or modify, in whole or in part, the Court's Rulings on Claim Construction, including the Court's construction of "*message(s) [not including notification message(s)]*" and "*data media type.*"

3. The parties further stipulate that Defendants' counterclaims for declaratory judgment of invalidity and unenforceability should be dismissed WITHOUT PREJUDICE. Defendants retain the right to assert any and all defenses and counterclaims in the future, including in this action.

4. Plaintiffs and Defendants recognize that Defendants believe that there are additional grounds for summary judgment of non-infringement, including but not limited to grounds based on claim constructions other than the terms "*message(s) [not including notification messages]*" and "*data media type.*" The parties agree that to the extent that the final

judgment is not affirmed on appeal and the case is remanded, Defendants have the right to assert these grounds in the future, including the right to assert other non-infringement grounds as the basis of summary judgment, and Plaintiffs have the right to dispute those grounds.

5. Plaintiffs and Defendants recognize that this stipulation and agreement as to a final judgment of non-infringement has the same effect for res judicata and collateral estoppel purposes as if Defendants had moved for summary judgment of non-infringement as to each of the Patents-in-Suit based on the Court's construction of "*message(s) [not including notification messages]*" and "*data media type*" (where applicable), and the Court granted the motion.

6. The foregoing is without prejudice to the rights of Plaintiffs and Defendants to raise on appeal any other issues that may properly be raised.

Plaintiffs and Defendants respectfully request that the Court enter final judgment in the form attached hereto as Final Judgment of Non-Infringement.

**DATED: June \_\_, 2014**

**WE STIPULATE TO THIS:**

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 5, 2014, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Timothy E. Grochocinski  
Timothy E. Grochocinski